

EVENT REPORT
EUROPEAN CAPITAL MARKETS INSTITUTE



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The European Market Infrastructure Regulation (EMIR) came into force in August 2012. The implementation of this cornerstone piece of the EU financial market regulation is still in its early stage and the enforcement of the first clearing and reporting obligations are not expected before 2014.

With a panel composed of a key regulator and diverse market participants, this ECMI seminar discusses the challenges to the EMIR's implementation, the way in which the industry is preparing to fulfil EMIR's obligations and their impact on the EU post-trade infrastructure.

Speakers:

- o **Hanna Rayner**, Seconded National Expert, DG Market, European Commission
- o **Ido de Geus**, Head of Treasury, PGGM
- o **Andrew Douglas**, Head of European Government Relations, DTCC
- o **Josephine de Chazournes**, Senior Analyst Securities and Investment, CELENT
- o **Eric Kolodner**, Managing Director, Tradeweb
- o **Diego Valiante**, ECMI Head of Research and Research Fellow, CEPS [moderator]

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The meeting began with the introduction by Hanna Rayner who described the latest progress of the Commission in the adoption of EMIR technical standards and presented the expected timeline for the following implementation steps.

Since the entry into force of the last technical standards adopted in March, EU CCPs are applying for authorization to operate under EMIR to their national authorities and the same is happening for non-EU CCPs willing to operate within the EU borders, even though ESMA has not provided yet an equivalence recognition framework for third countries regimes referring to market infrastructures. In this regard, the Commission highlighted the importance, and the priority of its focus, in designing the rules of EMIR in order for them to work efficiently in a cross-border environment given the specific transnational nature of OTC derivatives transactions. In their cross-border application EMIR rules are believed to be inspired by the same principles on which the CFTC and the SEC based their proposals for cross-border OTC derivatives regulation. The question about whether the EU cross-border *equivalence* approach and the US one based on the principle of *substitute compliance* are operatively corresponding is still open.

Together with CCPs, Trade Repositories (TRs) are applying to ESMA for being recognised under EMIR and at the moment half a dozen firms have applied for the authorisation.

The discussion highlighted how the nature of TRs is still not well defined; according to **Andrew Douglas** (DTCC), it being a very costly activity, there are doubts regarding its and, more generally, concerns regarding the commercial interest in running these infrastructures by for-profit entities. Moreover, in the likely event that more firms would be authorised by ESMA, data may be fragmented across different institutions, making the data gathering by the legislator and the wider market less efficient and more costly.

Ido de Geus (PGGM) presented the point of view of pension funds. Despite being granted exemption from EMIR for the first three years, these entities are considerably worried about the consequences that EMIR will bring to their business model once the exemption expires. Pension funds already need to apply risk mitigation procedures for the transactions that will not be subject to clearing obligation. If rules are implemented as they stand, they envisage a scenario in which the increasing need for liquid assets will result in un-hedged risk that will be passed onto final users, with lower returns for pensioners and in stark contrast with art. 26 of EMIR. To avoid this outcome, pension funds request that their low-risk profile is acknowledged and special measures for collateral transformation established, such as access to ECB liquidity, direct access to CCPs (as clearing members are likely to be asked more collateral on top of legal requirements and indirect membership may become too burdensome) or a solution which involves the use of non-cash collateral.

On the actual status of the implementation, **Andrew Douglas** argued that both users and market infrastructures are *not ready* to efficiently meet EMIR obligations. The lack of preparation is attributed to: i) a widespread *uncertainty* about both key deadlines for the major obligations (reporting, clearing) and ii) the recognition process of extra-EU CCPs. Another issue is the lack of *coherence* between the main pieces of European financial market regulation (e.g., EMIR, MiFID, CRD) in dealing with extraterritoriality. Moreover, in dealing with the approach to OTC derivatives regulation in other jurisdictions, it would be desirable not to overlap the implementation of reporting obligations in the EU with other jurisdictions' (e.g. Hong Kong, Singapore) so as to facilitate the operational transition for the industry.

The concerns voiced by Andrew Douglas as to the degree of preparation of the EU industry were seconded by **Josephine de Chazournes** (CELENT) in her presentation of a survey on the impact of EMIR on the *buy-side*. Despite being in favour of EMIR, end-users of derivatives are almost unanimous (90% of survey respondents) in their feeling of uncertainty tied to the potential impact of regulatory changes to their business in 2013. As confirmation of the delay in the adaptation to EMIR by the industry, de Chazournes reported that, according to this survey, a mere 30% of buy-side market participants are currently fully operational in terms of implementation efforts for OTC clearing and collateralisation.

The issue of regulatory uncertainty was mentioned by [Eric Kolodner](#) (Tradeweb); in his comparison between the EU and the US reporting obligations he underlined how the US 'hierarchical' approach results much clearer in defining *who* has to report and *what* has to be reported. In case of regulatory uncertainty the risk is for market participants to adopt a conservative approach in their business strategy triggering inefficient market dynamics.

The process of implementing of EMIR has just started and most of it will take place towards the end of 2013, for reporting obligations, and in the first half of 2014 for the first clearing obligation. The timeline that will bring this core EU piece of legislation to its full operability is however troubled by technical and operational factors which might delay the process even further. Time is needed for the independent authorities to draft technical standards and for the industry to adapt business models to a new competitive environment. The feeling, nevertheless, is that the uncertainty regarding regulatory developments is preventing the industry to put in place the necessary organisational changes for the EU industry to be prepared when deadlines will finally come.

Find more information about this research seminar and download the presentations from the speakers at www.eurocapitalmarkets.org